IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

OP.No. 6273 of 1998(V)

PETITIONERS:

1. T.M. ABDUL HAZEEZ, S/O. T.A. MOIDEEN, AGED 37 YEARS,
"SAPTHASWARA", MADAYIKONAM P.O., IRINJALAKUDA, TRICHUR
(TUTOR GRADE II (HIGHER GRADE) IN VILIN, CMGCM COLLEGE, PALGHAT.

2. R. SWAMINATHAN, S/O. LATE K.V. RAJAGOPALA IYER, AGED 37 YEARS,
2/155, NEW KALPATHI, PALGHAT – 3, DO. DO.

3. K.V. PRATHAPAN THAMPURAN, S/O. LATE K.N.M. KRISHNAN NAMBOODIRIPAD,
AGED 48 YEARS, LEKHA NIVAS, NEAR NORTH FORT,
TRIPUNITHURA, ERNAKULAM, DO. R.V.M. COLLEGE, TRIPUNITHURA.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI.ARUN.B.VARGHESE
SRI.T.P.DEYANANTHAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVT.
SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF COLLEGIATE EDUCATION, TRIVANDRUM.

3. C.K. VENKITAARAMAN, TUTOR GRADE II (VIOLIN),
CHEMBAI MEMORAIAL COLLEGE OF MUSIC, PALGHAT.

4. SISILI OMANA, TUROR GRADE II DO. DO.

5. HARIKRISHNAN, TUTOR GRADE II (VIOLIN) SREE SWATHI THIRUNAL
COLLEGE OF MUSIC, THYCAUD, TRIVANDRUM.

R3 TO R5 BY ADV. SRI.K.P.DANDAPANI
R1 & R2 BY SHRI P.A. SALIM, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 3/04/2007, ALONG WITH OP NO. 20334 OF 1998 THE COURT ON 10.4.2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NO.11333/98 IN OP 6273/98

DISMISSED

10.4.2007 SD/- T.R. RAMACHANDRAN NAIR, JUDGE

APPENDIX

EXT.P1-TRUE COPY OF THE GOVT. OF KERALA NOTIFICATION DATED 24.4.1990

EXT.P2-TRUE COPY OF DO. DATED 23.4.1990 PUBLISHED ON 30.4.1990

EXT.P3-TRUE COPY OF JUDGMENT DATED 8.6.1994 IN OP 17292/92 BEFORE THIS COURT

EXT.P4-TRUE COPY OF REPRESENTATION DT.15.12.97 FROM THE PETITIONER TO THE MINISTER FOR EDUCATION

EXT.P5-TRUE COPY OF NOTIFICATION DATED 29.10.1997 SUBMITTED BY PSC

EXT.P6-TRUE COPY OF SRO DATED 18.4.2002

EXT.P7-TRUE COPY OF ORDER DATED 5.7.2003 OF R2

RESPONDENTS' EXTS:

EXT.R3(A)-TRUE COPY OF COMMUNICATION DT.11.5.1988 OF THE GOVT. OF KERALA.

// TRUE COPY //

P.S. TO JUDGE

T.R. Ramachandran Nair, J.

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O.P.Nos.6273 & 20334 of 1998

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Dated this the 10th day of April, 2007

JUDGMENT

Petitioners 1 and 2 in O.P.No.6273/1998 are the petitioners in O.P. No.20334/1998. These two petitioners and the third petitioner in O.P. NO.6273/1998 entered service in the cadre of Tutor Grade II in Music Colleges. They are governed by the Special Rules, viz. Kerala Collegiate Education Subordinate Service Rules. In O.P. No.6273/1998, the substantial challenge is against the amendment of the special rules and to declare it ultra vires and unconstitutional and to declare that respondents 3, 4 and 5 are not entitled to be promoted superseding the claim of the petitioners. In O.P. No.20334/1998 the petitioners applied for Ganapraveena Examination for the year 1998 and the substantial prayer is to declare that they are entitled to write both theory and practical in the said examination.

2. It is an admitted position that pursuant to the interim orders passed by this court, they have appeared for the examination but the certificates have not been issued to them even though they have passed the

examination. The short facts of the cases are the following:

3. The petitioners are having the qualification of Sangeetha Vidwan Title in Violin issued by the Government of Tamil Nadu. First petitioner in O.P. No.6273/1998 was appointed as Tutor Grade II on 28.5.1983 whereas the second petitioner joined as Tutor Grade II on 22.7.1986. He is also having the same qualification. The third petitioner in the very same original petition joined as Tutor Grade II in Violin on 23.12.1988. Respondents 3, 4 and 5 in O.P. No.6273/1998 joined service on 22.12.1988, 23.1.1989 and 21.6.1991 respectively as Tutor Grade II (Violin) in various colleges under the Government of Kerala. They are having the qualification of Ganabhooshanam diploma issued by the Government of Kerala.

4. The entry post Tutor Grade II and the next higher post have been renamed subsequently. In fact, the post of Tutor Grade II was originally known as Academy Assistant Grade II and the promotion from that post is as Tutor Grade I which was originally known as Academy Assistant Grade I. The qualification prescribed for the post of Tutor Grade II as per the Special Rules for the Kerala Collegiate Education Subordinate Service published as per G.O.(P) NO.283/67/FD dated 2.9.1967 were the following:

> "i) First or Second class in Ganapraveena or Vidwan diploma of the Travancore/Travancore-Cochin/Kerala Governemnt or in

Vidwan/diploma of Madras Government.

ii) In the absence of candidates with the qualifications in item (i) First Class in Ganabhooshanam of the Travancore/Travancore-Cochin/Kerala Government; and

iii) In the absence of candidates with the qualification in item (ii) first class in Sangeetha Bhooshanam of the Annamalai University."

The post of Tutor Grade I is filled up by promotion from the post of Tutor Grade II and the qualifications to hold the said post are the same that of Tutor Grade II. The Special Rules were amended as per G.O.(P) No.3000/98/Fin. dated 25.11.1998 and both the posts of Tutor Grade II and Tutor Grade I were deleted and they have been re-categorised as Lecturer. There is a subsequent amendment of the Special Rules as per G.O.(P) No.98/90/H.Edn. dated 23.4.1990. Going by the above Special Rules, the post of Asst. Professor has to be filled up by appointment or promotion from qualified hands and in the absence of such candidates, by direct recruitment. The post of Tutor Grade I has to be filled up by promotion from Tutor Grade II. The qualification for the post of Asst. Professor and Tutor Grade I are the following:

"Assistant Professor	By Promotion Or by direct recruitment	Pass in Ganapraveena Examination of the Govt. of Kerala or Vidwan diploma of the Travancore/Travancore-Cochin/Kerala Government Desirable - knowledge of English and Malayalam. Reputation as an outstanding exponent of Karnatic Music
Tutor Gr.I	By promotion	1. First or Second Class in Ganapraveena or in Vidwan Diploma of the Travancore/Travancore-Cochin/Kerala Government Or 2. In the absence of candidates with the qualifications in item 1, First Class in Ganabhooshanam of the Travancore/Travancore-Cochin/Kerala Government. 3. In the absence of candidates with the qualification in Item 2, First Class in Sangeetha Bhooshanam of the Annamalai University."

The next promotion from the post of Lecturer is Assistant Professor. Going by the amended rules, Sangeetha Vidwan Title of the Government of Tamil Nadu do not find a place as qualification either in the post of Tutor Grade I or in the higher post. Apparently, this caused disadvantage to petitioners as

any scope for promotion for them is permanently barred. In O.P. No.6273/1998 the petitioners point out that even though for the entry post of Tutor Grade II (now Lecturer) the qualification still remains without amendment including the qualification of Vidwan/Diploma of Madras Government, by prescribing the new qualifications by the process of amendment, the vested rights of petitioners for further promotion has been affected. The petitioners contends that the qualification of Sangeetha Vidwan Title was treated as equivalent to the qualification of Ganapraveena as per the unamended rules and even now for appointment to the entry post of Lecturer and therefore the amendments have been made arbitrarily and resulting in discrimination. Now the juniors to the petitioners who are having other qualifications, are eligible for promotion as Assistant Professor and higher posts and the petitioners and others who are having the qualification of Sangeetha Vidwan from Tamil Nadu alone are singled out for harsh treatment.

5. The facts of O.P.No.20334/1998 spells out another picture wherein the petitioners who are deprived of any chance for promotion seeks to improve their position by appearing for the Ganapraveena examination so that they could aspire for further promotion, obviously. According to them, they submitted applications since Ganapraveena has been made the

qualification for promotion to Tutor Grade I and further to the post of Asst. Professor. It is stated that their applications were received and they were issued hall tickets with registration Nos.114 and 115 respectively as evidenced by Exts.P4 and P5 in O.P. No.20334/1998. They sat for the examination and when they were awaiting their turn for the practical examination, by Ext.P6 they were directed to produce Ganabhooshanam Diploma certificate. According to the petitioners, they are holders of Sangeetha Vidwan title which is considered as equivalent to Ganapraveena of Kerala Government. Ganapraveena is a higher qualification than Ganabhooshanam. At the time of their appointment Sangeetha Vidwan title of Tamil Nadu Government was treated as equivalent to Ganapraveena. Hence, the petitioners filed representations evidenced by Exts.P7 to P10 contending that they cannot be compelled to produce certificate of Ganabhooshanam diploma. They claim in these representations that they are qualified to appear for Ganapraveena because they are already holding an equivalent qualification to that of Ganapraveena, i.e. Sangeetha Vidwan of Tamil Nadu. Ext.P11 is a notification issued inviting applications for Ganapraveena Examination and as per clause 8 of the same “teachers in music colleges and schools who possess Ganabhooshanam qualification will be allowed to appear for Ganapraveena examination as private candidates

after completing 3 years of service." As per the said clause those candidates should furnish true copies of their Ganabhooshanam certificates and also certificate to prove their required service to be eligible to write the examination. It is the stand of the petitioners that since they are having a qualification which is equivalent to Ganapraveena, to insist for production of certificate of Ganabhooshanam in their case at least, affects the fundamental rights of petitioners guaranteed under Article 14 of the Constitution,

6. Additional respondent No.5 impleaded in O.P. No.20334/1998 and has filed a counter affidavit opposing the contentions of the petitioners. According to additional 5th respondent, even though Sangeetha Vidwan title from Tamil Nadu entitled them to get appointment in the entry post, in view of the amendment of the Special Rules, their prayers stand to fail. It is averred in paragraph 5 of the counter affidavit that at the time when petitioners were appointed as per the unamended rule, Sangeetha Vidwan title was considered as equivalent to the qualification of Ganapraveena diploma of Travancore/Cochin/Kerala Government. It is contended that promotion to the post of Tutor Grade I or Asst. Professor should be made only in accordance with the amended Special Rules and as the petitioners lack such qualification, they are not entitled for promotion. It is further

pointed out that only such teachers having Ganabhooshanam qualification alone can appear for Ganapraveena examination as private candidates and therefore petitioners are not eligible to appear for the said examination. Even though the petitioners managed to send the applications and were issued hall tickets, since they lack the qualification, the results of their examination cannot be declared.

7. Learned Senior Counsel for the petitioners Shri N. Dharmadan, argued that petitioners had a vested right for promotion to higher posts based on the qualification they were having and amendment to the Special Rules barring in effect such promotions because of the introduction of the new qualification, is unconstitutional and is violative of Articles 14 and 16 of the Constitution of India. It is submitted by the learned Senior Counsel that as far as a personnel entering in a service is concerned, it is highly objectionable that they should face stagnation by denying them any avenues of promotion to higher posts and such denial of promotion is violative of their fundamental rights going by the decisions reported in **Deep Chand v. State of U.P.** (AIR 1959 SC 649, **P.D. Aggarwal and others v. State of U.P. and others** ((1987) 3 SCC 622), **P. Mahendran and others v. State of Karnataka and others** ((1990) 1 SCC 411 and **Virender Singh Hooda**

and others v. State of Haryana and another (AIR 2005 SC 137). Learned Senior counsel also relied upon the judgment of a learned Single Judge of this court in O.P. NO.4818/1986 wherein the subject matter of the original petition was the challenge against appointment of petitioners 2 and 3 in O.P. No.6273/1998. In the light of the contention that Sangeetha Vidwan title of Tamil Nadu was treated as equivalent to Ganapraveena, the position has to be examined. Shri K.P. Satheesan, learned counsel for the additional 5th respondent opposed the prayers of petitioners.

8. In O.P. No.4818/1986 the argument of the petitioner therein was that in the notification invited by the Public Service Commission, one of the qualifications shown was Vidwan (Violin) Diploma, 1st or 2nd class, awarded by the Government of Madras and respondents 4 and 5 therein were only having Sangeetha Vidwan Title which is not the qualification prescribed in the notification. This court elaborately considered the issue. It was held after referring to the contentions of the Public Service Commission and the State that they have been treating Sangeetha Vidwan Title of Madras Government as the same as Vidwan Diploma of that Government and that the former is equivalent to Post Graduate/Post Diploma qualification. His Lordship noted in paragraph 12 of the judgment that "ever since 1970 when the Special Rules were framed, Sangeetha Vidwan Title awarded by the

Government of Madras after a Two Year Course, was treated as sufficient qualification as per the Special Rules and it was at least treated as the same or equivalent to Vidwan Diploma of the Madras Government. His Lordship, referring to the contention that Ganabhooshanam is superior to Sangeetha Vidwan, in paragraph 14 held in the following terms:

> "I am not impressed by the submission made by counsel for the petitioner, that Sangeetha Vidwan must be treated as inferior to Ganabhooshanam, because the latter is a Four Year Course, whereas the former is only a Two year course. Nor am I impressed by the submission that Title shall be treated as inferior to Diploma or a Certificate."

The Original Petition was dismissed with a direction that the Government should make the position clear. The petitioners have also produced in O.P.No.6273/1998 as Ext.P3, the judgment of a learned Single Judge in O.P. No.17292/1992. There the challenge was against the provisional promotion of the third respondent therein as Asst. Professor (Violin) under Rule 31(a)(i) of the General Rules. The contention was that for the post of Asst. Professor (Violin) the qualification prescribed inter-alia is a pass in Granapraveena Examination of the Government of Kerala or Vidwan Diploma of the Travancore/Travancore-Cochin/Kerala Government and the

third respondent therein was having a pass in Sangeetha Vidwan Examination of Madras Government which is equivalent to Ganabhooshanam or Ganapraveena. A reading of the judgment shows that this court upheld the promotion granted by relaxing the qualification under Rule 39.

9. It is evident from the pleadings that Ganapraveena was considered as equivalent to Sangeetha Vidwan title of Tamil Nadu Government before the amendment of the Special Rules which fact is admitted by additional 5th respondent in his counter affidavit also. Even though the State has chosen to file counter affidavit in both the original petitions, the only stand taken is that the petitioners are not having the required qualification as per the amended rules. What was the purport of the amendment or what are the reasons for not including Sangeetha Vidwan of Tamil Nadu as a qualification for Tutor Grade I and other posts is not made clear in the counter affidavits, even though the amendment itself is challenged in O.P. No.6273/1998.

10. It is well settled that as far as appointees in a service are concerned, stagnation in a particular post is considered as not conducive to the interest of the service itself. Unless a person is given avenues of further promotion, he will have to settle himself with the entry post resulting in

disunity and hardship affecting the quality of service itself. This court and the Honourable Supreme Court in various decisions have held that situations resulting in stagnation in respect of some employees and providing avenues of promotion in respect of another class of employees, is not in the interest of administration (See 2002 (10) SCC 432). It may result in arbitrariness and discrimination. Herein, it is clear that originally for Tutor Grade I, the same qualification was sufficient for promotion from the entry post. Going by the unamended rules, Ganapraveena was treated as equivalent to Sangeetha Vidwan. Why the same was deleted by the amendment, is not clear from the counter affidavit of the first respondent also. At any rate, that has resulted in denying avenues of promotion to the petitioners. Driven to the said fate, they wanted to appear the qualifying examination Ganapraveena but therein also hurdles are placed on their way since they are not having the qualification of Ganabhooshanam.

11. Even though learned Senior Counsel for the petitioners argued that since their applications for appearance in the Ganapraveena Examination have been treated as valid and as they were allowed to write the examination, the respondents are estopped from directing them to produce the evidence in Ganabhooshanam, I think that the principle of estoppel will not save the petitioners from the predicament they are put in.

Admittedly going by the notification Ext.P11 produced in O.P. No.20334/1998 for submitting the application and for appearing in the examination what is required is production of the certificate showing a pass in Ganabhooshanam examination. Materials are insufficient for this court to decide whether the qualifications mentioned are equivalent. It is a matter for the rule making authority to pronounce upon.

12. In view of the above position, according to me, this is a matter requiring serious attention at the hands of respondents 1 to 3. Learned Senior Counsel pointed out that Ganapraveena was treated as equivalent to Vidwan Title and therefore they cannot be compelled to produce the certificate of Ganabhooshanam which is not equivalent to Sangeetha Vidwan Title. At any rate, since Sangeetha Vidwan title was treated as equivalent, learned counsel submitted that petitioners should have been allowed to write the examination treating the applications as valid.

13. The position that is emerging from the above is that the qualification Sangeetha Vidwan (Violin) of the Government of Tamil Nadu is sufficient for the entry post of Tutor Grade II at the time of their appointment. After the amendment of the Special Rules Ganapraveena is required for further promotion. It is also clear that their juniors who are having the other qualification have been promoted already. Therefore, this

is an aspect which requires deeper examination by the Government itself as held by this court in the judgment in O.P. No.4818/1986. More attention is needed since some of the employees like the petitioners are driven to the wall as they are denied any avenues of promotion. These are matters for the rule making authority itself to decide.

14. Therefore, O.P. No.20338/1998 is disposed of directing the first respondent to consider the entire matter in the light of the observations made above as requested for by the petitioners in Exts.P7 to P10 representations. Petitioners are also allowed to submit any further representation in this regard pointing out any other relevant aspects to sustain their claim for declaration of the result of the examination they have undertaken for securing Ganapraveena, if they so choose. Therefore, first respondent is hereby directed to take up Exts.P7 to P10 representations or any other representations which may be filed by the petitioners as directed herein and pass orders on its merits after hearing all parties within a period of two months from the date of production of a copy of this judgment. Since the petitioners have already appeared for the examination and have passed the examination also, it is upto the first respondent to take a decision regarding the issuance of certificates to them.

O.P.No.6278/1998 is also disposed of directing the Government to

consider the grievance of the petitioners against the amendment of the special rules which has resulted in denying them avenues of promotion. Since this is the main issue, a decision shall be taken by the Government in this regard also within the time limit as directed above. The Government shall pass orders in the matter in the light of the observations made above.

Accordingly, the original petitions are disposed of with the above directions. No costs.

(T.R. Ramachandran Nair, Judge.)

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